for leave to exercise his rights as a chargee. The proceedings result not in a judgment or decree, but in the making or refusal of an order of sale. After the sale has taken place and the chargee has prepared his account, and he takes action to recover any deficiency shown thereby, different considerations will of course arise, but at the earlier stage the chargee does not sue on the agreement to repay the sum lent, but as I have said, applies for leave to sell the land the subject of the charge.

That being so, this notification has no application.

I would allow the appeal, reverse the order below, and send the matter back to the Registrar with an intimation that this Court is of the opinion that permission should be accorded to the chargee to pursue his remedies against the chargor. No order as to costs.

MUDIE, J.—I agree.

MCFALL, J.—I agree.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]

IN THE MATTER OF THE ESTATE AND EFFECTS OF HENRY CHARLES TAYLOR, DECEASED.

[SELANGOR ORIGINATING SUMMONS No. 71 of 1932]

Benefit Society—Right of nominee of a deceased member to Death Allowance.

The nominee of a deceased member of a Benefit Society is entitled to the sum of money due to be paid out by the Society on the death of the member. This sum of money does not form part of the estate of the deceased and is not available for the payment of his debts.

Creditor in person.

Administratrix in person.

MUDIE, J.—This is an application by a creditor of the deceased that his debt should be paid out of monies in the hands of the administratrix which were paid to her by the Federated Malay States Benefit Society and the Mutual Provident Association, as nominee of the sums payable on the death of the deceased in respect of payments made by the deceased in his lifetime.

The estate is insolvent. The creditor is secured by a charge on certain lands of the deceased. But the value of the security is less than the debt.

Benefit Societies are governed in England by the Friendly Societies Act, 1896. Here there is no legislation on the subject. The contract entered into between the deceased and the society is that in consideration of payments made by the deceased to the society in his lifetime, the society will pay certain monies to the nominee of the deceased on his death. These monies are therefore the property of the nominee, and do not form part of the estate of the deceased. The transaction is of the nature of a gift, though it may be revocable.

It seems to me that unless and until it is set aside as a fraud on the creditors, there is a valid transfer of property. These monies therefore are not available for payment of the deceased's debts.

Order accordingly.

[APPELLATE CRIMINAL JURISDICTION]

LOKE KUI THONG .. .. .. **Appellant**

vs.

PUBLIC PROSECUTOR . .. **Respondent**

[SELANGOR MAGISTRATE'S CRIMINAL APPEAL No. 40 of 1932]

Public Nuisance—Criminal Procedure Code, 1926, Section 89—Powers of Magistrate.

Under Section 89 of the Criminal Procedure Code, 1926, the only power of a First Class Magistrate, when he considers that any trade is injurious to health or physical comfort, is to require the person carrying on the trade to suppress or remove that trade or occupation.

In the case of a dealer in gramophones, a First Class Magistrate has no power to make an order against him prohibiting him from making a noise by means of loud speakers and gramophones, in the course of his trade in selling such instruments.

The Hon. Mr. S. Veerasamy for the Appellant.

R. C. Cussen, Deputy Legal Adviser, for the Respondent.

THORNE, AG. C.J.—The appellant was charged before the Court of the Magistrate, Kuala Lumpur, with the offence of having played a gramophone between the 1st and 8th days of June of this year, in disobedience to an order of the Magistrate. He was convicted under section 188 of the Penal Code and fined $15.75. Against that conviction and sentence he has preferred this appeal.

The order, the terms of which are alleged to have been broken, is not set out in the record in the present appeal, but there appears on the record a notice which bears date 7th day of July, 1931, addressed to the appellant, which informs him that an order absolute has been made against him prohibiting him thenceforth from making a noise by means of loud speakers or gramophones, etc.

Under section 89 of the Criminal Procedure Code, whenever a Magistrate of the First Class considers that any trade, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, he may then make a conditional order requiring the person carrying on such